

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HENRY E. COLLIER,

Petitioner,

vs.

JAMES HARTLEY, Warden,

Respondent.

No. C 12-1764 JSW (PR)

**ORDER TO SHOW CAUSE;  
GRANTING LEAVE TO PROCEED IN  
FORMA PAUPERIS AND MOTION TO  
REVIEW CLAIMS; DENYING  
MOTIONS FOR APPOINTMENT OF  
COUNSEL AND TO AUGMENT  
RECORD**

(Docket Nos. 2-5)

**INTRODUCTION**

Petitioner is a California prisoner proceeding pro se, and he has filed a pro se habeas corpus petition pursuant to 28 U.S.C. § 2254. This order directs Respondent to show cause why the petition should not be granted.

**BACKGROUND**

Petitioner was convicted in Monterey County Superior Court of furnishing marijuana to minors and attempting to dissuade a witness. In 2010, the trial court sentenced him to a term of thirteen years in state prison. The California Court of Appeal affirmed, and the California Supreme Court subsequently denied a petition for review.

**DISCUSSION**

**I     Standard of Review**

This court may entertain a petition for a writ of habeas corpus “in behalf of a

1 person in custody pursuant to the judgment of a State court only on the ground that he is  
 2 in custody in violation of the Constitution or laws or treaties of the United States.” 28  
 3 U.S.C. § 2254(a). It shall “award the writ or issue an order directing the respondent to  
 4 show cause why the writ should not be granted, unless it appears from the application that  
 5 the applicant or person detained is not entitled thereto.” *Id.* § 2243.

## 6 II Legal Claims

7 As grounds for federal habeas relief, Petitioner claims: (1) that his right to  
 8 represent himself was violated; (2) his sentence exceeds that permitted by state law; and  
 9 (3) he received ineffective assistance of counsel. These claims, when liberally construed,  
 10 are cognizable.

## 11 CONCLUSION

12 For the foregoing reasons and for good cause shown,

13 1. The Clerk shall serve by certified mail a copy of this order and the petition, and  
 14 all attachments thereto, on Respondent and Respondent's attorney, the Attorney General  
 15 of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

16 2. Respondent shall file with the Court and serve on Petitioner, within **ninety (90)**  
 17 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the  
 18 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should  
 19 not be granted based upon the claims found cognizable above. Respondent shall file with  
 20 the answer and serve on Petitioner a copy of all portions of the state trial record that have  
 21 been transcribed previously and that are relevant to a determination of the issues  
 22 presented by the petition. If Petitioner wishes to respond to the answer, he shall do so by  
 23 filing a traverse with the Court and serving it on Respondent within **thirty (30)** days of  
 24 the date the answer is filed.

25 3. Respondent may, within **ninety (90) days**, file a motion to dismiss on  
 26 procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to  
 27 Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion,  
 28

1 Petitioner shall file with the Court and serve on Respondent an opposition or statement of  
2 non-opposition within **thirty (30)** days of the date the motion is filed, and Respondent  
3 shall file with the Court and serve on Petitioner a reply within **fifteen (15)** days of the date  
4 any opposition is filed.


5 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep  
6 the Court informed of any change of address by filing a separate paper captioned "Notice  
7 of Change of Address." He must comply with the Court's orders in a timely fashion.  
8 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
9 to Federal Rule of Civil Procedure 41(b).

10 5. Petitioner's motion to have his claims reviewed is GRANTED. His  
11 application to proceed in forma pauperis is also GRANTED due to his lack of funds. His  
12 motion for appointment of counsel is DENIED due to the lack of extraordinary  
13 circumstances, such as the need for an evidentiary hearing, at this time. Lastly, his  
14 motion to "augment record on appeal" is also DENIED as the instant action is not an  
15 "appeal," and there is no procedure for "augmenting" an "appeal" in this Court.

16 This order terminates docket numbers 2-5.

17 IT IS SO ORDERED.

18 DATED: May 1, 2012

19   
20 JEFFREY S. WHITE  
21 United States District Judge  
22  
23  
24  
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27  
28

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

HENRY E. COLLIER,  
Plaintiff,

Case Number: CV12-01764 JSW

**CERTIFICATE OF SERVICE**

v.

JAMES HARTLEY et al,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 1, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Henry E. Collier P-84146  
Avenal State Prison  
130-61 UP  
P.O. Box 900  
Avenal, CA 93204

Dated: May 1, 2012



Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk